IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

M.P. No. 144 of 1991. Division Bench (Civil)

PETITIONER : PUNDAS, aged about 38 years, son of Shri Jangi, by occupation - service, resident of Manjgaompara Mungeli, District Bilaspur.

VERSUS

RESPONDENTS :
1. Krishi Upaj Mandi Mungeli, District Bilaspur, through its Secretary.
2. The Chairman, Krishi Upaj Mandi Samiti, Mungeli, District Bilaspur.
3. The Director of Mandies, Bhopal.
4. The State of Madhya Pradesh through the Secretary, Ministry of Agriculture, Bhopal.

PETITION UNDER ARTICLE 226 AND 227, CONSTITUTION OF INDIA.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1440 of 1991

Pundas

-Versus-

Krishi Upaj Mandi Mungeli & others

Post for order on 7th July, 2005.

Sd/-
SATISH K. AGNIHOTRI
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1440 of 1991

Pundas

-Versus-

Krishi Upaj Mandi Mungeli & others

Petitioner by Miss Sharmila Singhai, Advocate.

Respondents No.1 to 3 by Shri Ranbir Singh Marhas, Advocate.

ORDER
(7.7.2005)

By Justice Satish K. Agnihotri.

1. The present petition is filed by the petitioner under Articles 226 and 227 of the Constitution of India impugning the order dated 24.1.1991 (Annexure P/15).

2. The relevant facts necessary for adjudication of the case are that the petitioner was appointed as Nakedar on daily wages post by the Respondent No.2 on the payment of Rs. 6/- per day. Likewise the petitioner was appointed time and again with breaks by several orders.

3. The last appointment order dated 26.11.1990 provides for appointment for a period of 60 days on daily wages basis. It was further provided in the order that the services of the petitioner could be terminated in case of no need, or, no increase in the income of the Krisi Upaj Mandi Samiti, or any illegal work committed by the employee; or on the date the period of contract comes to an end without any notice. By the order dated 24.1.1991 the services of the petitioner as daily wages employee was terminated simplicitor, without assigning any reasons.

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4. Miss Sharmila Singhai, learned counsel for the petitioner submitted that the services of the petitioner has been terminated without any notice or enquiry even reasons have not been assigned in the termination order. It was further contended that the last appointment order does not clearly indicate any specific grounds like there was no work available with the Mandi Samiti, and income of the Mandi Samiti has not been increased, or the employee has committed some illegal acts, or the period of 60 days has come to an end, and the order was passed without notice. It was also contended by learned counsel for the petitioner that the Respondent No.2 ought to have assigned one of the above stated reasons in the order of the termination, but no reason has been assigned and no opportunity of hearing has also been afforded to the petitioner. Learned counsel further contended that it is a case of clear violation of the principles of the natural justice, when the petitioner has been working since 19.2.1982 till 24.1.1991 on the post of Nakedar with some breaks. She also submitted that the petitioner ought to have been regularized on the post of Nakedar, but when the question of regularization was raised, the Respondent No.2 has terminated the services of the employee without any reason. In support of her contentions learned counsel for the petitioner relied on the decisions of the Supreme Court rendered in the cases of Jacob M. Puthuparambil & others Vs. Kerala Water Authority & others reported in (1991) 1 S.C.C. 28; Sri Rabinarayan Mohapatra Vs. State of Orissa & others reported in AIR 1991 S.C. 1286; State of Haryana & others Vs. Piara Singh & others, reported in

(1992) 4 S.C.C. 118; and Gopalakrishnan E. Vs. Union of India, reported in A.I.R. 1996 S.C. 707.

5. On the contrary, Shri Ranbir Singh Marhas learned counsel for the respondents submitted that the petitioner was appointed for specified period on the basis of the availability of the work. In the last appointment order it was clearly specified that the services of the petitioner was engaged only for a period of 60 days. The services of the petitioner could have been terminated on the ground of non-availability of work, no increase in the income of the Mandi Samiti, commission of any illegal acts, or expiry of the period without intimation to the petitioner. The services of the petitioner came to an end on the expiry of 60 days, as such, no notice or enquiry was necessary in the case. Learned counsel for the respondent further contended that the termination of services was simplicitor without any stigma.

6. It was further contended by learned counsel for the Respondents No. 1 to 3 that the services of the petitioner from 19.2.1982 as Nakedar was with breaks, and not continuously, only for specified periods on the basis of need of the service, as such the claim of the petitioner for regularization or further reinstatement of service does not stand on the ground. Learned counsel for the respondents submitted for dismissal of the petition. He relieed on the decision of the Supreme Court in the cases of Keshav Narayan Gupta & others Vs. Jila Parishad, Shivpuri (M.P.) & another reported in (1998) 9 S.C.C. 78, Nazira Begum Lashkar & others Vs. State of Assam & others, reported in (2001) 1 S.C.C. 143, and Union of India & others Vs. Harish Balkrishna Mahajan, reported in (1997) 3 S.C.C. 194 and a decision of the High Court of Madhya Pradesh in the case of

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Krishi Upaj Mandi Samiti, Dabra & another Vs. Presiding Officer, Labour Court No.1, Gwalior & others 2001 (2) M.P.L.J. 167.

7. After hearing learned counsel for the parties and perusing the records, I found that the petitioner was engaged as Nakedar on daily wages from the year 1982 to 1991 with substantial breaks. The petitioner's services were terminated on expiry of 60 days of the last appointment order dated 26.11.1990. Though the respondent No.2 has not assigned any reason for termination of service but looking into the last appointment and termination order it could not be said that the termination was on the grounds specified in the last appointment order. In the past appointments it has been found there has been a gap for about a month or so.

8. The case of Jacob M. Puthuparambil & others (supra) was a case of regularization, wherein the Supreme Court (in para 15) has held as under:-

"It is unfair and unreasonable to remove people who have been rendering service since some time as such removal has serious consequences. The family of the employee which had settled down and accommodated its needs to the emoluments received by the bread winner, will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered 'age barred' for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to lie within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution."

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In the case of Sri Rabinarayan Mohapatra (Supra) the Supreme Court (in para 8) has held as under:-

" The appellant was appointed on July 12, 1982 and has been working with the approval of the authorities for almost 4 years with short breaks. The managing committee is still utilizing his services though there is no approval by the educational authorities for the period subsequent to 1986. It is nobody's case that his services were ever terminated on grounds of inefficiency or misconduct."

In the case of State of Haryana & others Vs. Piara Singh & others (Supra) in the case of regularization, (in para 45) the Supreme Court has held as under:-

" The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee."

In the case of Keshav Narayan Gupta & others (Supra), cited by the counsel for the respondents the Supreme Court (in para 4) has held as under:-

"According to the appellants there were no rules prescribing procedure for appointments to these posts and the only requirement was that the approval of the Collector should be obtained. The Resolution of 22.1.1987, however, provides that until rules are framed for appointment or promotion, the appointments should be made by following the general procedure approved by the Collector. There should be a Selection Committee in which the President/his representative should also be included. In the present case appointments were

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made by the Secretary of the Panchayat concerned. It does not seem as if any applications were invited for these posts. The approval of the Collector was not obtained for any regular appointment. Initially, only temporary appointments for limited periods were sanctioned by the Collector. When the Panchayat passed resolutions seeking regular appointment for these appellants, the approval of the Collector was not given to such regular appointment. Therefore, in any view of the matter it would be difficult to consider their appointments as regular."

9. Keeping in view the decisions of the Supreme Court in above stated cases, it is settled principles of law that if an employee has been working for a long period without any break there is a presumption that the employer is in need of the services, as such the argument that the employer does not need his services is untenable. The other cases dealing with the regularization are not relevant for the purpose of this case as it is a case of termination and question of regularization though prayed in the petition cannot be considered at this stage when the petitioner is not in service since 24.1.1991. The petitioner has worked for about 9 years with breaks. It clearly indicates that the respondents are in need of service of Nakedar. Therefore, termination of services of the petitioner and appointment of some other person on ad hoc basis is not permissible as the Supreme Court in the case of Pyara Singh (Supra) has clearly held (in para 46) that "an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority".

10. In view of the fact that the petitioner has worked from February 1982 to 24.1.1991, has a legitimate expectation that the

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services of the petitioner would be required on regular basis, and it has been also informed at the bar that the services of some other similarly situated ad hoc employees have been regularized. It was unreasonable to remove the services of the petitioner when he has rendered the services for a long time, which has generated hope and a feeling of security in him and it had attuned his family to live within his earnings. In totality of the facts and circumstances of the case I am of the considered opinion that the impugned order dated 24.1.1991 deserves to be set aside with the direction to the Respondent No.2 to reinstate the petitioner in service.

11. So far as the question of back wages is concerned, I am of the opinion that since the petitioner has not clearly established that he was not gainfully employed anywhere after his termination from the Mandi Samiti and it was a case of a daily wages employee, as such, the petitioner is not entitled to any payment when there was no work.

12. With regard to the prayer for regularization, I am of the opinion that the same cannot be granted at this stage because the regularization can be granted when the petitioner is in services, and not when he is out of service for long. The petitioner is at liberty to raise the issue of regularization, if so advised, in future.

13. In the result, the writ petition is allowed. The impugned order of termination dated 24.1.1991 is set aside and the respondents are directed to reinstate the petitioner in service without back wages within a period of one month from today. There shall be no order as to costs.

Sd/-
SATISH K. AGNIHOTRI
Judge